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92-100

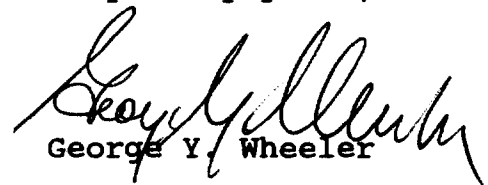
Re: Amendment of the Commission's Rules to Establish New  
Narrowband Personal Communications Services - GEN Dkt  
No. 90-314/ET Dkt No. 100

Dear Mr. Caton:

Transmitted herewith on behalf of American Paging, Inc. are  
an original and eleven copies of its Comments in the above-  
captioned proceeding.

In the event that there are any questions concerning this  
matter. please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

**OCT 25 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

**GEN Docket No. 90-314**

ET Docket No. 92-100

Amendment of the Commission's )  
Rules to Establish New Narrowband )  
Personal Communications Services )

**TO: The Commission**

COMMENTS OF  
AMERICAN PAGING, INC.

American Paging, Inc., on behalf of itself and its subsidiaries (collectively "API"), by its attorneys, submits its comments in response to petitions for reconsideration and/or clarification referenced in the Commission's Public Notice (Report No. 1976) dated October 4, 1993 regarding the Commission's First Report and Order in the above-referenced proceeding.

API has strongly supported in its comments and reply comments the rapid implementation of the Commission's initiatives authorizing 900 MHz narrowband PCS technologies. We are aware of the overwhelming workload placed upon the Commission in order to meet legislatively imposed deadlines for decisions in the Regulatory Treatment and Competitive Bidding rulemaking proceedings

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(GEN Docket No. 93-252 and PP Docket No. 93-253 respectively).

At the same, we urge the Commission to act promptly in these proceedings in order to make available the new and innovative services possible from narrowband PCS technologies at the earliest possible date.

1. API Supports The Inclusion Of Population-Based Coverage Requirements In Section 99.17 Of The Commission's Rules.

We agree with proposal of Mobile Telecommunications Technologies, Inc. ("Mtel") to add percentage of population as an alternative to the geographic coverage requirements in Section 90.17(a) of the Commission's rules. This "clarification" of the Commission's rules appropriately emphasizes the public service aspects of the Commission's objectives in this proceeding. The Mtel proposal for "37.5 percent" standard for population coverage within five years of being licensed and a "75 percent" standard for coverage within ten years is realistic and substantial in terms of the nationwide, MTA and BTA service areas coverage.

2. Mtel Should Be Required To Pay An Appropriate Amount To The U.S. Treasury For The Narrowband PCS License Awarded Under The Commission's Pioneer Preference Policies.

PageMart, Inc. ("PageMart"), Pacific Bell and Paging Network, Inc. ("PageNet") have all pointed out that Mtel should be required to pay for the license awarded to it under the Commission's pioneer preference policies. We agree.

At the time of the grant of Mtel's nationwide license, the Commission clearly could not have known how the Omnibus Budget Reconciliation Act of 1993 ("Act") Section 6003 would define the circumstances in which competition bidding would be mandated.<sup>1</sup> The Commission's decision in 1991 to guarantee a license award based on a pioneer preference finding was a logical solution given the established selection methodologies available to the Commission at that time. In a context where no licensee would be required to pay, such as under random selection, a Commission award of a license to a pioneer would have created no unintended anti-competitive disparities.

As pointed out in Pagenet's Petition (p. 20), the award of a "cost-free" license has the undesirable effect of awarding to Mtel a nationwide license which confers upon it economic advantages over competitors. The impact of permitting one competitor to proceed on the basis of a nationwide "cost-free" license will have significant anti-competitive consequences for nationwide systems as well as MTA and BTA systems.

We interpret the Act as conferring upon the Commission adequate discretion to adopt policies and rules which implement

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<sup>1</sup> The Commission's policy to "guarantee" a license was adopted long prior to enactment of the competitive bidding legislation. See the Commission's Report and Order in GEN Docket No. 90-217, 6 FCC Rcd 3488 (1991), reconsideration granted in part/denied in part, Memorandum Opinion and Order, 7 FCC Rcd. 1808 (1992).

Congressional objectives recited in the Act which include encouraging competition, supporting the Commission's pioneer preference policies and providing revenues to be paid into the U.S. Treasury. We have no objection to the award of the nationwide narrowband PCS license to Mtel as approved by the Commission. Having foreclosed the opportunity for any other applicant to obtain that license under competitive bidding and in consideration of the full range of public policy objectives at issue here, we think the Commission should require Mtel to pay a just and reasonable amount into the U.S. Treasury as a condition of obtaining grant.<sup>2</sup>

3. Grant To Mtel Should Not Confer A Headstart Advantage.

We also support the position of PageNet (Petition, p. 21) that Mtel should not be given the competitive advantage of an unreasonable headstart in the implementation of its nationwide system. In fairness, all competitors should have the opportunities in terms of market entry based upon simultaneous grant dates for initial narrowband PCS licensing. The fact that Mtel is already assured that it will receive a license gives it significant competitive benefits in terms of system planning and implementation. The Commission should not increase this advantage by

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<sup>2</sup> The Commission adopted on October 21, 1993 a Notice of Proposed Rulemaking to review its pioneer preference rules. As an alternative to consideration of the issues addressed here, the Commission might expand the scope of that review to encompass the unique circumstances of the Mtel license award.

licensing Mtel's nationwide narrowband PCS system prior to acting on the proposals of the competitive bidding winners.

Conclusion

The proposals which we support on reconsideration here should be adopted because they will enhance competition, encourage development of a full range of new and innovative services and support the broad objectives of Congress in adopting competition bidding. The public benefits in terms of selection, price and widespread availability of narrowband PCS services have been repeatedly demonstrated where the Commission provides appropriate and fair opportunities for competition. The national interest would also be served by additional payment received by the U.S. Treasury for the Mtel license.

Respectfully submitted,

AMERICAN PAGING, INC.

  
By /s/ George Y. Wheeler  
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I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Comments of American Paging, Inc.", was sent by first class U.S. mail, postage prepaid, on this 25th day of October, 1993 to the offices of the following:

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